

RemarksI. Status of claims

Reconsideration is requested. Claims 1-23 and 45-61 were previously canceled without prejudice or disclaimer. No claims are amended herein. Claims 24-44 are pending.

II. Claim rejections

Claims 24, 28 and 35 are rejected under 35 USC 102(a) as being anticipated by DE 100 02 390 (DE '390).

Claims 25-27 are rejected under 35 USC 103(a) as being unpatentable over DE '390 in view of US 5,183,616 to Hedrick.

Claims 36-41 and 43-44 are rejected under 35 USC 103(a) as being unpatentable over DE 196 34 499 (DE '499) in view of US 5,183,616 to Hedrick.

Applicants respectfully traverse each of these rejections.

III. Rejection under 35 USC 102(a) in view of DE '390

Claims 24, 28 and 35 are rejected under 35 USC 102(a) as being anticipated by DE '390. DE '390 does not disclose a flat surface of a pallet that closes the entire open bottom of the mold cavity, as recited in claim 24.

The rejection asserts that the drawing sheet 50 of DE '390 closes the entire bottom of the mold cavity. However, the drawing sheet 50 of DE '390 does not include a flat surface that closes the entire open bottom of the mold cavity. As illustrated in Figure 3 of DE '390, the drawing sheet 50 includes an upright mold ridge 52 that extends into the mold cavity to form a depression 44 with a stopping face 24 and a support surface 22 in the upper surface of the resulting block (see, e.g., page 7, lines 20-25 of the translation). As illustrated in Figures 1 and 8-12, the projection 43 of the block interacts with the stopping face 24 and support surfaces 22 when the blocks are stacked into courses to provide setback between the courses of the blocks.

Due to the mold ridge 52, the drawing sheet 50 of DE '390 does not have a flat surface that closes the entire open bottom of the mold cavity as recited in claims 24, 28 and 35. Therefore, claims 24, 28 and 35 are not anticipated by DE '390.

**IV. Rejection under 35 USC 103(a) over DE '390 in view of Hedrick**

Claims 25-27 depend from claim 24 and are patentable along with claim 24. As shown above, the drawing sheet 50 of DE '390 does not have a flat surface that closes the entire open bottom of the mold cavity. Further, because the depression formed by the mold ridge 52 is necessary in order to provide interaction with the projection 43, there is no teaching or suggestion to remove the mold ridge 52. To do so, as suggested by the examiner in combining it with Hedrick, would defeat the purpose of DE '390. The use of a flat pallet in DE '390 would be contrary to the objectives of that teaching. By not separately distinguishing the claims 25-27, Applicants do not concede the propriety of the rejections thereof, and Applicants reserve the right to file arguments at a later date specifically addressing the dependent claims.

**V. Rejection under 35 USC 103(a) over DE '499 in view of Hedrick**

With respect to independent claim 36, DE '499 does not teach or suggest a first converging side wall portion that extends across the entire distance of the mold cavity between two opposed side walls that are adjacent the first side wall. Hedrick also fails to teach or suggest such a construction.

As described in DE '499, the plate 4 is used to define an undercut 20 in the resulting block (see, e.g., page 8, lines 14-15, page 9, line 5, and page 13, claim 1, of the translation; the plates 4 in Figures 1, 3 and 4; and the undercut 20 in dashed lines in Figure 2). The plate 4 in DE '499 extends across only a portion of the mold cavity between the opposed plates 2 (as illustrated in Figure 1). It can be seen from Figure 2 in DE '499 that the resulting undercut 20 extends across only a portion of the block (page 9, line 5 of the translation; illustrated in dashed lines in Figure 2).

In DE '499, the undercut 20 is formed in the side surface of the block and is intended to extend into the block interior, leaving the remainder of the block side surface unaffected by the undercut 20 (see, e.g., page 3, lines 18-19 of the translation). Further, DE '499 describes a significant advantage of the disclosed invention to be that only the part of the contour plate serving to produce the undercut need be moved out of the cavity of the undercut, thereby reducing the masses that need to be moved (see, e.g., page 4, lines 14-20).

There is no teaching or suggestion in DE '499 of making the plate 4 extend across the entire distance of the mold cavity between two opposed side walls, just as there is no teaching or suggestion in DE '499 that the undercut should extend across the entire side of the block. The only suggestion for such a construction comes solely from Applicant's disclosure, which is impermissible hindsight.

Additionally, DE '499 teaches away from such a construction. DE '499 teaches reducing the size or mass of the plate 4 in order to reduce the mass that needs to be moved (see, e.g., page 4, lines 14-20). Making the plate 4 extend across the entire distance of the mold cavity would increase the mass that needs to be moved, which is contrary to the teaching of DE '499.

Hedrick does not remedy the deficiencies of DE '499. The mold in Hedrick does not include a converging side wall portion as recited in claim 36. The mold in Hedrick is for forming rectangular bricks. None of the sides of the bricks are angled, so no portion of any side wall of the Hedrick mold needs to converge.

DE '499 and Hedrick do not teach or suggest a converging side wall portion as recited in claim 36. Therefore, claim 36 is patentable over DE '499 and Hedrick.

Claims 37-41 and 43-44 depend from claim 36 and are patentable along with claim 36 and need not be separately distinguished. By not separately distinguishing the dependent claims, Applicants do not concede the propriety of the rejections thereto, and Applicants reserve the right to file arguments at a later date specifically addressing the dependent claims.

#### VI. Allowable subject matter

Applicants gratefully acknowledge the indication that claims 29-34 and 42 contain allowable subject matter. As discussed above, the remaining claims are believed to be allowable as well.

VII. Conclusion

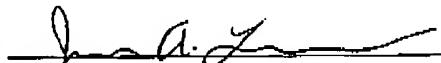
Applicants believe that the claims now pending in this patent application are in immediate condition for allowance. Favorable consideration is respectfully requested. If any further questions arise, the Examiner is invited to contact Applicants' representative at the number listed below.



Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 322-5300

Date: July 28, 2004

  
James A. Larson  
Reg. No. 40,443